UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

THOMAS V. NARDOLLILO	:	
	:	
v.	:	C.A. No. 16-514S
	:	
NANCY A. BERRYHILL, Acting Commissioner of the Social Security Administration	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

This matter is before the Court for judicial review of a final decision of the Commissioner of the Social Security Administration ("Commissioner") denying Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") under the Social Security Act (the "Act"), 42 U.S.C. § 405(g). Plaintiff filed his Complaint on September 14, 2016 seeking to reverse the decision of the Commissioner. On April 7, 2017, Plaintiff filed a Motion for Reversal or Remand. (Document No. 12). On May 8, 2017, the Commissioner filed a Motion for an Order Affirming the Decision of the Commissioner. (Document No. 13).

This matter has been referred to me for preliminary review, findings and recommended disposition. 28 U.S.C. § 636(b)(1)(B); LR Cv 72. Based upon my review of the record, the parties' submissions and independent research, I find that there is not substantial evidence in this record to support the Commissioner's decision and findings that Plaintiff is not disabled within the meaning of the Act. Consequently, I recommend that Plaintiff's Motion for Reversal

(Document No. 12) be GRANTED and that the Commissioner's Motion to Affirm (Document No. 13) be DENIED.

I. PROCEDURAL HISTORY

Plaintiff filed applications for DIB on October 1, 2013 (Tr. 193-196) and SSI on October 16, 2016 (Tr. 197-205) alleging disability since September 27, 2013. The applications were denied initially on February 20, 2014 (Tr. 87-97, 98-108) and on reconsideration on June 24, 2014. (Tr. 143-145, 146-148). Plaintiff's date last insured is December 31, 2017. (Tr. 31). Plaintiff requested an Administrative Hearing. On April 7, 2015, a hearing was held before Administrative Law Judge Martha Bower (the "ALJ") at which time Plaintiff, represented by counsel, and a vocational expert ("VE") appeared and testified. (Tr. 45-73). The ALJ issued an unfavorable decision to Plaintiff on May 15, 2015. (Tr. 27-44). The Appeals Council denied Plaintiff's request for review on July 19, 2016. (Tr. 6-9). Therefore, the ALJ's decision became final. A timely appeal was then filed with this Court.

II. THE PARTIES' POSITIONS

Plaintiff argues that the ALJ improperly weighed the medical opinion evidence and improperly "cherry picked" the evidence in assessing Plaintiff's credibility.

The Commissioner disputes Plaintiff's claims and contends that substantial evidence supports the ALJ's assignment of weight to the medical opinions of record and her assessment of Plaintiff's subjective complaints.

III. THE STANDARD OF REVIEW

The Commissioner's findings of fact are conclusive if supported by substantial evidence. 42 U.S.C. § 405(g). Substantial evidence is more than a scintilla – i.e., the evidence must do

more than merely create a suspicion of the existence of a fact, and must include such relevant evidence as a reasonable person would accept as adequate to support the conclusion. Ortiz v. Sec'y of Health and Human Servs., 955 F.2d 765, 769 (1st Cir. 1991) (per curiam); Rodriguez v. Sec'y of Health and Human Servs., 647 F.2d 218, 222 (1st Cir. 1981).

Where the Commissioner's decision is supported by substantial evidence, the court must affirm, even if the court would have reached a contrary result as finder of fact. Rodriguez Pagan v. Sec'y of Health and Human Servs., 819 F.2d 1, 3 (1st Cir. 1987); Barnes v. Sullivan, 932 F.2d 1356, 1358 (11th Cir. 1991). The court must view the evidence as a whole, taking into account evidence favorable as well as unfavorable to the decision. Frustaglia v. Sec'y of Health and Human Servs., 829 F.2d 192, 195 (1st Cir. 1987); Parker v. Bowen, 793 F.2d 1177 (11th Cir. 1986) (court also must consider evidence detracting from evidence on which Commissioner relied).

The court must reverse the ALJ's decision on plenary review, however, if the ALJ applies incorrect law, or if the ALJ fails to provide the court with sufficient reasoning to determine that he or she properly applied the law. Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1999) (per curiam); accord Cornelius v. Sullivan, 936 F.2d 1143, 1145 (11th Cir. 1991). Remand is unnecessary where all of the essential evidence was before the Appeals Council when it denied review, and the evidence establishes without any doubt that the claimant was disabled. Seavey v. Barnhart, 276 F.3d 1, 11 (1st Cir. 2001) citing, Mowery v. Heckler, 771 F.2d 966, 973 (6th Cir. 1985).

The court may remand a case to the Commissioner for a rehearing under sentence four of 42 U.S.C. § 405(g); under sentence six of 42 U.S.C. § 405(g); or under both sentences. Seavey,

276 F.3d at 8. To remand under sentence four, the court must either find that the Commissioner's decision is not supported by substantial evidence, or that the Commissioner incorrectly applied the law relevant to the disability claim. Id.; accord Brenem v. Harris, 621 F.2d 688, 690 (5th Cir. 1980) (remand appropriate where record was insufficient to affirm, but also was insufficient for district court to find claimant disabled).

Where the court cannot discern the basis for the Commissioner's decision, a sentence-four remand may be appropriate to allow her to explain the basis for her decision. Freeman v. Barnhart, 274 F.3d 606, 609-610 (1st Cir. 2001). On remand under sentence four, the ALJ should review the case on a complete record, including any new material evidence. Diorio v. Heckler, 721 F.2d 726, 729 (11th Cir. 1983) (necessary for ALJ on remand to consider psychiatric report tendered to Appeals Council). After a sentence four remand, the court enters a final and appealable judgment immediately, and thus loses jurisdiction. Freeman, 274 F.3d at 610.

In contrast, sentence six of 42 U.S.C. § 405(g) provides:

> The court...may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding;

42 U.S.C. § 405(g). To remand under sentence six, the claimant must establish: (1) that there is new, non-cumulative evidence; (2) that the evidence is material, relevant and probative so that there is a reasonable possibility that it would change the administrative result; and (3) there is good cause for failure to submit the evidence at the administrative level. See Jackson v. Chater, 99 F.3d 1086, 1090-1092 (11th Cir. 1996).

A sentence six remand may be warranted, even in the absence of an error by the Commissioner, if new, material evidence becomes available to the claimant. Id. With a sentence six remand, the parties must return to the court after remand to file modified findings of fact. Id. The court retains jurisdiction pending remand, and does not enter a final judgment until after the completion of remand proceedings. Id.

IV. THE LAW

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §§ 416(i), 423(d)(1); 20 C.F.R. § 404.1505. The impairment must be severe, making the claimant unable to do her previous work, or any other substantial gainful activity which exists in the national economy. 42 U.S.C. § 423(d)(2); 20 C.F.R. §§ 404.1505-404.1511.

A. Treating Physicians

Substantial weight should be given to the opinion, diagnosis and medical evidence of a treating physician unless there is good cause to do otherwise. See Rohrberg v. Apfel, 26 F. Supp. 2d 303, 311 (D. Mass. 1998); 20 C.F.R. § 404.1527(d). If a treating physician's opinion on the nature and severity of a claimant's impairments, is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the record, the ALJ must give it controlling weight. 20 C.F.R. § 404.1527(d)(2). The ALJ may discount a treating physician's opinion or report regarding an

inability to work if it is unsupported by objective medical evidence or is wholly conclusory. See Keating v. Sec'y of Health and Human Servs., 848 F.2d 271, 275-276 (1st Cir. 1988).

Where a treating physician has merely made conclusory statements, the ALJ may afford them such weight as is supported by clinical or laboratory findings and other consistent evidence of a claimant's impairments. See Wheeler v. Heckler, 784 F.2d 1073, 1075 (11th Cir. 1986). When a treating physician's opinion does not warrant controlling weight, the ALJ must nevertheless weigh the medical opinion based on the (1) length of the treatment relationship and the frequency of examination; (2) the nature and extent of the treatment relationship; (3) the medical evidence supporting the opinion; (4) consistency with the record as a whole; (5) specialization in the medical conditions at issue; and (6) other factors which tend to support or contradict the opinion. 20 C.F.R § 404.1527©. However, a treating physician's opinion is generally entitled to more weight than a consulting physician's opinion. See 20 C.F.R. § 404.1527(c)(2).

The ALJ is required to review all of the medical findings and other evidence that support a medical source's statement that a claimant is disabled. However, the ALJ is responsible for making the ultimate determination about whether a claimant meets the statutory definition of disability. 20 C.F.R. § 404.1527(e). The ALJ is not required to give any special significance to the status of a physician as treating or non-treating in weighing an opinion on whether the claimant meets a listed impairment, a claimant's residual functional capacity (see 20 C.F.R. §§ 404.1545 and 404.1546), or the application of vocational factors because that ultimate determination is the province of the Commissioner. 20 C.F.R. § 404.1527(e). See also Dudley v. Sec'y of Health and Human Servs., 816 F.2d 792, 794 (1st Cir. 1987).

B. Developing the Record

The ALJ has a duty to fully and fairly develop the record. Heggarty v. Sullivan, 947 F.2d 990, 997 (1st Cir. 1991). The Commissioner also has a duty to notify a claimant of the statutory right to retained counsel at the social security hearing, and to solicit a knowing and voluntary waiver of that right if counsel is not retained. See 42 U.S.C. § 406; Evangelista v. Sec'y of Health and Human Servs., 826 F.2d 136, 142 (1st Cir. 1987). The obligation to fully and fairly develop the record exists if a claimant has waived the right to retained counsel, and even if the claimant is represented by counsel. Id. However, where an unrepresented claimant has not waived the right to retained counsel, the ALJ's obligation to develop a full and fair record rises to a special duty. See Heggarty, 947 F.2d at 997, citing Currier v. Sec'y of Health Educ. and Welfare, 612 F.2d 594, 598 (1st Cir. 1980).

C. Medical Tests and Examinations

The ALJ is required to order additional medical tests and exams only when a claimant's medical sources do not give sufficient medical evidence about an impairment to determine whether the claimant is disabled. 20 C.F.R. § 416.917; see also Conley v. Bowen, 781 F.2d 143, 146 (8th Cir. 1986). In fulfilling his duty to conduct a full and fair inquiry, the ALJ is not required to order a consultative examination unless the record establishes that such an examination is necessary to enable the ALJ to render an informed decision. Carrillo Marin v. Sec'y of Health and Human Servs., 758 F.2d 14, 17 (1st Cir. 1985).

D. The Five-step Evaluation

The ALJ must follow five steps in evaluating a claim of disability. See 20 C.F.R. §§ 404.1520, 416.920. First, if a claimant is working at a substantial gainful activity, she is not

disabled. 20 C.F.R. § 404.1520(b). Second, if a claimant does not have any impairment or combination of impairments which significantly limit her physical or mental ability to do basic work activities, then she does not have a severe impairment and is not disabled. 20 C.F.R. § 404.1520(c). Third, if a claimant's impairments meet or equal an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1, she is disabled. 20 C.F.R. § 404.1520(d). Fourth, if a claimant's impairments do not prevent her from doing past relevant work, she is not disabled. 20 C.F.R. § 404.1520(e). Fifth, if a claimant's impairments (considering her residual functional capacity, age, education, and past work) prevent her from doing other work that exists in the national economy, then she is disabled. 20 C.F.R. § 404.1520(f). Significantly, the claimant bears the burden of proof at steps one through four, but the Commissioner bears the burden at step five. Wells v. Barnhart, 267 F. Supp. 2d 138, 144 (D. Mass. 2003) (five-step process applies to both SSDI and SSI claims).

In determining whether a claimant's physical and mental impairments are sufficiently severe, the ALJ must consider the combined effect of all of the claimant's impairments, and must consider any medically severe combination of impairments throughout the disability determination process. 42 U.S.C. § 423(d)(2)(B). Accordingly, the ALJ must make specific and well-articulated findings as to the effect of a combination of impairments when determining whether an individual is disabled. Davis v. Shalala, 985 F.2d 528, 534 (11th Cir. 1993).

The claimant bears the ultimate burden of proving the existence of a disability as defined by the Social Security Act. Seavey, 276 F.3d at 5. The claimant must prove disability on or before the last day of her insured status for the purposes of disability benefits. Deblois v. Sec'y of Health and Human Servs., 686 F.2d 76 (1st Cir. 1982), 42 U.S.C. §§ 416(i)(3), 423(a),(c). If a

claimant becomes disabled after she has lost insured status, her claim for disability benefits must be denied despite her disability. Id.

E. Other Work

Once the ALJ finds that a claimant cannot return to her prior work, the burden of proof shifts to the Commissioner to establish that the claimant could perform other work that exists in the national economy. Seavey, 276 F.3d at 5. In determining whether the Commissioner has met this burden, the ALJ must develop a full record regarding the vocational opportunities available to a claimant. Allen v. Sullivan, 880 F.2d 1200, 1201 (11th Cir. 1989). This burden may sometimes be met through exclusive reliance on the Medical-Vocational Guidelines (the "grids"). Seavey, 276 F.3d at 5. Exclusive reliance on the "grids" is appropriate where the claimant suffers primarily from an exertional impairment, without significant non-exertional factors. Id.; see also Heckler v. Campbell, 461 U.S. 458, 103 S. Ct. 1952, 76 L.Ed.2d 66 (1983) (exclusive reliance on the grids is appropriate in cases involving only exertional impairments, impairments which place limits on an individual's ability to meet job strength requirements).

Exclusive reliance is not appropriate when a claimant is unable to perform a full range of work at a given residual functional level or when a claimant has a non-exertional impairment that significantly limits basic work skills. Nguyen, 172 F.3d at 36. In almost all of such cases, the Commissioner's burden can be met only through the use of a vocational expert. Heggarty, 947 F.2d at 996. It is only when the claimant can clearly do unlimited types of work at a given residual functional level that it is unnecessary to call a vocational expert to establish whether the claimant can perform work which exists in the national economy. See Ferguson v. Schweiker, 641 F.2d 243, 248 (5th Cir. 1981). In any event, the ALJ must make a specific finding as to

whether the non-exertional limitations are severe enough to preclude a wide range of employment at the given work capacity level indicated by the exertional limitations.

1. Pain

"Pain can constitute a significant non-exertional impairment." Nguyen, 172 F.3d at 36. Congress has determined that a claimant will not be considered disabled unless he furnishes medical and other evidence (e.g., medical signs and laboratory findings) showing the existence of a medical impairment which could reasonably be expected to produce the pain or symptoms alleged. 42 U.S.C. § 423(d)(5)(A). The ALJ must consider all of a claimant's statements about his symptoms, including pain, and determine the extent to which the symptoms can reasonably be accepted as consistent with the objective medical evidence. 20 C.F.R. § 404.1528. In determining whether the medical signs and laboratory findings show medical impairments which reasonably could be expected to produce the pain alleged, the ALJ must apply the First Circuit's six-part pain analysis and consider the following factors:

> (1) The nature, location, onset, duration, frequency, radiation, and intensity of any pain;
>
> (2) Precipitating and aggravating factors (e.g., movement, activity, environmental conditions);
>
> (3) Type, dosage, effectiveness, and adverse side-effects of any pain medication;
>
> (4) Treatment, other than medication, for relief of pain;
>
> (5) Functional restrictions; and
>
> (6) The claimant's daily activities.

Avery v. Sec'y of Health and Human Servs., 797 F.2d 19, 29 (1st Cir. 1986). An individual's statement as to pain is not, by itself, conclusive of disability. 42 U.S.C. § 423(d)(5)(A).

2. Credibility

Where an ALJ decides not to credit a claimant's testimony about pain, the ALJ must articulate specific and adequate reasons for doing so, or the record must be obvious as to the credibility finding. Rohrberg, 26 F. Supp. 2d at 309. A reviewing court will not disturb a clearly articulated credibility finding with substantial supporting evidence in the record. See Frustaglia, 829 F.2d at 195. The failure to articulate the reasons for discrediting subjective pain testimony requires that the testimony be accepted as true. See DaRosa v. Sec'y of Health and Human Servs., 803 F.2d 24 (1st Cir. 1986).

A lack of a sufficiently explicit credibility finding becomes a ground for remand when credibility is critical to the outcome of the case. See Smallwood v. Schweiker, 681 F.2d 1349, 1352 (11th Cir. 1982). If proof of disability is based on subjective evidence and a credibility determination is, therefore, critical to the decision, "the ALJ must either explicitly discredit such testimony or the implication must be so clear as to amount to a specific credibility finding." Foote v. Chater, 67 F.3d 1553, 1562 (11th Cir. 1995) (quoting Tieniber v. Heckler, 720 F.2d 1251, 1255 (11th Cir. 1983)).

V. APPLICATION AND ANALYSIS

A. The ALJ's Decision

The ALJ decided this case adverse to Plaintiff at Step 4 and, alternatively, at Step 5. At Step 2, the ALJ found that Plaintiff's anxiety and depression were "severe" impairments within the meaning of 20 C.F.R. §§ 404.1520(c) and 416.920(c). (Tr. 32-33). However, at Step 3, the

ALJ determined that Plaintiff's impairments did not, either singly or in combination, meet or medically equal any of the Listings. (Tr. 33). As to RFC, the ALJ concluded that Plaintiff could perform a full range of work at all exertional levels with certain non-exertional limitations related to his anxiety and depression. (Tr. 33-34). Based on this RFC and testimony from the VE, the ALJ found at Step 4 that Plaintiff was capable of performing his past work as an assembler and, alternatively, at Step 5, that Plaintiff was capable of performing other unskilled jobs available in the economy. (Tr. 38-39). Thus, the ALJ concluded that Plaintiff was not disabled for the period September 27, 2013 through May 15, 2015. (Tr. 40).

B. The ALJ's RFC Assessment is Not Supported By the Record

It is undisputed that the ALJ based her RFC assessment primarily upon the opinions of Dr. Slavit, a reviewing psychologist. (See Exh. 5A). She found his assessment to be "not unreasonable" and gave it "considerable weight." (Tr. 38). The ALJ also gave "limited probative weight" to the opinions of Dr. Scagnelli, Plaintiff's treating psychiatrist, and "not…great weight" to the opinions of Mr. Galek, Plaintiff's therapist. (Tr. 37). Both opined that Plaintiff suffered from severe anxiety and depression which resulted in disabling limitations. (See Exhs. 6F and 7F).

Plaintiff contends, inter alia, that the ALJ erred by relying so heavily on the assessments of Dr. Slavit. He argues that the only treatment records reviewed by Dr. Slavit pre-dated September 27, 2013,[1] the alleged onset date of disability, and that Dr. Slavit rendered his opinions before Plaintiff's condition worsened and soon after he stopped working. Finally, he acknowledges that Dr. Slavit's findings were largely based upon the consultative examination

[1] Dr. Scagnelli's records were received on October 22, 2013 (Tr. 89), and therefore the most recent record that Dr. Slavit could have reviewed was dated September 19, 2013, i.e., pre-onset date. (Tr. 289).

performed by Dr. Dragone-Hyde on December 11, 2013. (See Exh. 4F). However, he contends that it was error to do so because that examination was conducted less than two months after the alleged onset date and before Plaintiff's condition worsened. Plaintiff further points out that Dr. Dragone-Hyde apparently was unaware that Plaintiff was being treated by a psychiatrist and receiving therapy since she stated in her report that "no mental health records were provided" and she "recommend[ed] mental health counseling." (Tr. 303-304).

Plaintiff relies upon the First Circuit's decisions in Alcantara v. Astrue, 257 Fed. Appx. 333 (1st Cir. 2007), and Padilla v. Barnhart, 186 Fed. Appx. 19 (1st Cir. 2006). In Hall v. Colvin, 18 F. Supp. 3d 144, 154 (D.R.I. 2014), this Court summarized the holdings of Alcantara and Padilla as follows:

> The First Circuit has remanded cases where a consultant's opinion is based on an incomplete record. Notably, in Padilla v. Barnhart, 186 Fed. Appx. 19, 22 (1st Cir. 2006), the ALJ 'disregarded the most current medical information in the record and relied exclusively on the opinions and assessments of the consulting physicians and psychologist which, in turn, were based on an incomplete medical record.' The Court of Appeals held that '[t]his fact counsels against assigning controlling weight to these opinions.' Id. In Alacantara, the First Circuit held that an ALJ could not give a reviewing consultant's opinion "any significant weight because it was 'based on a significantly incomplete record, and it was not well justified.' 257 Fed. Appx. at 334. The Court of Appeals noted that '[a]lthough the ALJ stated that the record underwent no material change, he did not explain his analysis,' and, in fact, '[t]he record repeatedly indicated that the [claimant] deteriorated.' Id.

Applying that precedent to this case, I find that the ALJ unduly placed "considerable weight" on Dr. Slavit's assessment in establishing Plaintiff's RFC. First, Plaintiff alleges disability beginning on September 27, 2013 and the ALJ ruled on May 15, 2015 that Plaintiff had not shown that he was disabled for that nineteen and one-half month period. However, Dr.

Slavit's opinion was almost entirely irrelevant to that period, with the exception of Dr. Dragone-Hyde's report of her examination of Plaintiff on December 11, 2013.[2] Dr. Slavit did not review any of Dr. Scagnelli's records or opinions for the relevant period of disability under consideration. In addition, the record reflects that Plaintiff's condition deteriorated after Dr. Slavit rendered his opinions. Defendant appears to concede that the record contains evidence of deterioration but denies any "sharp deterioration in Plaintiff's condition." (ECF Doc. No. 13-1 at p. 14) (emphasis added). For instance, in January 2014, Dr. Scagnelli added panic disorder to his earlier diagnosis. (Tr. 289, 309). On March 27, 2014, Plaintiff reported having a couple of panic attacks daily. (Tr. 307). On May 30, 2014, Plaintiff's medication was adjusted, and Plaintiff reported that he did not leave his house very often. (Tr. 344). Plaintiff's dosage of Seroquel was increased on January 29, 2015 due to increased reported symptoms. (Tr. 337). Mr. Galek's therapy notes also suggest a deterioration in Plaintiff's condition. (See Tr. 352-371). On January 29, 2015, Dr. Scagnelli opined that Plaintiff was "not responding" to treatment and had a "poor" prognosis. (Tr. 311). Since Dr. Slavit did not have access to these records, his review was of an incomplete record that lacked relevant evidence regarding Plaintiff's condition and its deterioration[3] after the claimed date of onset. The ALJ thus erred in affording "considerable weight" to Dr. Slavit's opinions under these particular circumstances. Accordingly, remand for further administrative proceedings is warranted.

CONCLUSION

[2] As previously noted, Dr. Dragone-Hyde was apparently unaware that Plaintiff was treating with Dr. Scagnelli when she conducted her examination.

[3] As previously noted, Defendant concedes that Plaintiff's condition deteriorated but contends that it was not a "sharp" deterioration and thus was not material to the validity of Dr. Slavit's opinion.

For the reasons discussed herein, I recommend that Plaintiff's Motion for Reversal (Document No. 12) be GRANTED[4] and that Defendant's Motion to Affirm (Document No. 13) be DENIED. Further, I recommend that Final Judgment enter in favor of Plaintiff remanding this matter for further administrative proceedings consistent with this decision.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
June 1, 2017

[4] Plaintiff also challenges the ALJ's credibility determination. While the Court need not address the issue since Plaintiff's primary argument supports his request for remand, one aspect warrants mention. The ALJ found that Plaintiff's receipt of unemployment for the Fourth Quarter of 2012 and the first three quarters of 2013 (i.e., through September 30, 2013) was inconsistent with his allegations of total disability. (Tr. 37). This makes no sense, however, since the alleged onset date of disability is September 27, 2013 which is the very tail end of the period when Plaintiff was collecting unemployment benefits. Defendant effectively concedes this as an error but contends it is harmless since the ALJ's credibility assessment is otherwise supported by the record. (ECF Doc. No. 13-1 at p. 19).